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10 STATE WATER RESOURCES CONTROL BOARD

11 IN RE: ORDER NO. R5-2007-0705,)
12 ADOPTED MARCH 21, 2007, ISSUED)
13 BY CALIFORNIA REGIONAL WATER) No. _____
14 QUALITY CONTROL BOARD,)
15 CENTRAL VALLEY REGION,) PETITION FOR REVIEW
16 REGARDING 289 AND 291 CRESCENT)
17 STREET, QUINCY, CA)
18 _____)

19 Pursuant to Water Code § 13320 and 23 C.C.R. § 2050, Petitioner Washoe
20 Fuel, Inc.. dba Allied Washoe, a Nevada corporation authorized to do business in
21 California, respectfully submits this Petition for Review of the Cleanup and Abatement
22 Order ("Order"), No. R5-2007-0705, of the California Regional Water Quality Control
23 Board, Central Valley Region ("Regional Board"), adopted March 21, 2007. A copy of
24 the Order is attached hereto as Exhibit A.

25 This is one of three (3) nearly identical orders issued on the same day to
26 the past or present owners and/or operators of three facilities along Crescent Street in
27 Quincy. It has been given the number R5-2007-0705, by the Regional Board and, as
28 stated above, concerns property at 289 and 291 Crescent Street, Quincy, Plumas County.

1 California, (the "Site"). The second order, Order No. R5-2007-0706, was issued to Tom's
2 Sierra Company, Inc. dba Sierra Energy, for the parcel located at 188 Crescent Street.
3 The third order, Order No. R5-2007-0707, was issued to Warner Petroleum, Inc., David
4 W. Warner and Stacy Warner, Trustees of the Warner Family Trust B dated 23 June,
5 1996, David W. Warner and Stacy Warner, Trustees of the David and Stacy Warner
6 Family Trust dated 1 June 1995, Jonnie L. Askin, Blue Star Petroleum Inc., and Chevron
7 U.S.A., Inc., for the parcel located at 151 Crescent Street.
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10 The main purposes of these orders are to require investigation of and, if
11 necessary, remedial actions to cleanup hydrocarbons and MTBE that allegedly have been
12 discharged over time into soil and groundwater at each of the three facilities. Each of
13 these discharges allegedly impair or threaten to impair the beneficial uses of the
14 groundwater in the vicinity of the facilities. The orders also include other ancillary
15 compliance requirements, varying somewhat from site to site. The three (3) facilities
16 have been the subject of previous investigation and remedial actions by some or all of the
17 parties receiving the current orders, under the oversight of the Regional Board.
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19 The present Order was issued by action of the Assistant Executive Officer,
20 as were the other two nearly identical orders, pursuant to authority allegedly found in
21 California Water Code § 13304 and § 13267. It identified the Petitioner as the party
22 legally responsible for the Site. It was found in the Order that "related pollution from
23 each subject parcel" covered by the three orders "potentially threatens at least one of the
24 following receptors: the Norton and Spanish Creek Motel [water supply] wells, the
25 sanitary sewer, and surface water."
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27 The Regional Board ordered Petitioner, as well as the dischargers under
28

1 the other two orders, to do the following, as set forth in more detail in the Order:

- 2 (1) By April 16, 2007, conduct Public Participation, in cooperation with the
- 3 other dischargers.
- 4 (2) By April 16, 2007, submit a work plan and schedule for a screening level
- 5 Health Risk Assessment.
- 6 (3) By October 1, 2007, submit a Corrective Action Plan (CAP).
- 7 (4) By October 1, 2007, submit an Upgrade Work Plan (Work Plan) for the
- 8 Aboveground Petroleum Storage Tank Facility.
- 9 (5) By October 2, 2007, meet with the Regional Board staff to discuss the site
- 10 and appropriate work plans to address remaining data gaps.
- 11 (6) By November 30, 2007, implement the Work Plan.
- 12 (6) Within 60 days of the Regional Board's approval of the CAP, but no later
- 13 than November 30, 2007, begin implementation of the approved-CAP
- 14 remedial actions.
- 15 (7) Continue Monitoring on a quarterly basis.

16 PETITION FOR REVIEW BY THE STATE BOARD

17 Pursuant to 23 C.C.R. § 2050(a), a Petition for Review is required to

18 contain enumerated items of information. Responses to each of those items are set forth

19 below.

20 1. Name and Address of Petitioner

21 Petitioner is Washoe Fuel, Inc., dba Allied Washoe, a Nevada corporation

22 authorized to do business in California, and its address is P.O. Box 6930, Reno, NV

23 89513. Petitioner may be contacted through its legal counsel at the address and phone

24 number listed on the first page of this Petition.

25 2. The Specific Actions of the Regional Board

26 which the State Board is Requested to Review

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1 The State Water Resources Control Board ("State Board") is respectfully
2 requested to review:

3 (a) the Regional Board's implication/finding that Petitioner is in any way the
4 cause of pollution to the Norton and Spanish Creek Motel [water supply] wells, the
5 sanitary sewer, and surface water;

6 (b) the Regional Board's schedule for actions required under the Order;

7 (c) the Regional Board's failure to properly follow the requirements of State Board
8 Resolution 92-49 in issuing the Order;

9 (d) all other provisions of the Order that may be unreasonable, arbitrary and
10 capricious or otherwise not in accordance with the law based on the record in this case.

11 3. Date of the Action

12 March 21, 2007.

13 4. Reasons the Regional Board's Actions were
14 Improper and Inappropriate

15 Petitioner believes the Order is improper and inappropriate because it
16 purports to find that the Petitioner "potentially threatens at least one of the following
17 receptors: the Norton and Spanish Creek Motel [water supply] wells, the sanitary sewer,
18 and surface water." The implication is that Petitioner has caused pollution to one or more
19 of those receptors. As to the Norton water supply well and surface water, there is no
20 evidence to support that finding, in view of the data collected from all three sites. The
21 data indicates that the Norton well and surface water, if polluted at all, was polluted by
22 other sources, not the Petitioner's site. As to the Spanish Creek Motel well and the
23 sanitary sewer, although there is somewhat more basis to conclude Petitioner is
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1 potentially responsible, levels in those receptors are inconclusive, with the Spanish Creek
2 Motel results never above MCLs, and data inconclusive as to the source of contamination
3 in the sewer, which may well have come from other sources than any of the three sites.
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5 Secondly, the time schedule in the Regional Board's order does not give
6 sufficient time for submission by Petitioner of the Public Participation Plan or the Health
7 Risk Assessment. In addition, it does not give sufficient time for review and approval of
8 the CAP by Regional Board staff before the Petitioner is required to begin implementing
9 the CAP remedial actions.
10

11 Third, the Order fails to make findings needed to establish it has followed
12 the requirements of Resolution 92-49.

13 5. Manner in Which Petitioner is Aggrieved

14 Finding that the Petitioner's facility is potentially a source of pollution to
15 the Newton well and surface water, requires expenditure of funds that should not be
16 imposed upon the Petitioner until it is shown that some other discharger is not the source.
17

18 An insufficient schedule increases the Petitioner's costs unnecessarily.

19 Failure to analyze facts and make findings following the requirements of
20 Resolution 92-49 makes it more likely that the Petitioner will be required to carry out
21 actions that will not be technologically or cost effective and with the result that the public
22 interest will not be maximized, as required by the Water Code.
23

24 6. Specific Action Requested of the State Board

25 Petitioner respectfully requests that the State Board direct the Regional
26 Board to withdraw the present Order, conduct such factual investigations and analyses as
27 necessary, make required findings and issue a revised order correcting the deficiencies
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1 identified in this petition regarding the source or sources of pollution in the Norton well,
2 the Spanish Creek Motel well, the sanitary sewer, and surface water.

3
4 Petitioner respectfully requests that the Regional Board be directed to
5 issue a revised order with a more reasonable time schedule. Petitioner will continue to
6 cooperate with the Regional Board in providing properly requested information.

7 Petitioner further respectfully requests specifically that the State Board
8 direct the Regional Board to fully comply with Resolution 92-49, by conducting such
9 factual investigations and analyses necessary, making required findings and issuing a
10 revised order.
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12 7. Statement of Points and Authorities

13 Naming the Petitioner as a potential source of pollution of the Norton well
14 and surface water is not supported by the facts. The State Board has recognized that it is
15 important for orders to explain the basis for naming persons under § 13267 and § 13304.
16 See, e.g., In the Matter of the Petition of Mr. Kelly Engineer/All Star Gasoline, Inc.,
17 Order No. WQO - 2002-0001 (2002) page 4, citing, among others, to In the Matter of the
18 Petition of Las Virgenes Municipal Water District, et al., Order No. WQ 2001-03, at p. 4,
19 fn 8 ("A regional board must make findings that 'bridge the analytic gap between raw
20 evidence and ultimate decision or order.'" Further citations omitted.)
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22 It is also clear that Regional Boards are required to follow the provisions
23 of Resolution 92-49 in arriving at Orders such as that in the present case. Consistent with
24 the Antidegradation Policy and Chapter 15 regulations, the "Policies and Procedures for
25 Investigation and Cleanup and Abatement of Discharges Under Water Code Section
26 13304" set forth in Resolution No. 92-49 ("Cleanup Policies and Procedures"), as
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1 amended, require a balancing of interests, and this balancing was not conducted by the
2 Regional Board. Paragraph III.G. of the Cleanup Policies and Procedures states, in
3 pertinent part:
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5 "... [D]ischargers are required to cleanup and abate the effects of
6 discharges in a manner that promotes attainment of background water
7 quality, or the highest water quality which is reasonable if background
8 levels of water quality cannot be restored, considering all demands being
made and to be made on those waters and the total values involved,
beneficial and detrimental, economic and social, tangible and intangible."
(Underlining added for emphasis.)

9 This language comes directly out of Water Code § 13000, which sets forth the basic
10 legislative findings and declarations on these subjects:
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12 "... [A]ctivities and factors which may affect the quality of the waters of
13 the state shall be regulated to attain the highest water quality that is
14 reasonable, considering all demands being made and to be made on those
waters and the total values involved, beneficial and detrimental, economic
and social, tangible and intangible." (Underlining added for emphasis.)

15 No findings appear in the Order on these subjects, especially the reasonableness of the
16 action, the economic factors, etc. Without findings on these subjects, the Order is
17 deficient on its face.
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19 Paragraph 9. of the recitals of the Cleanup Policies and Procedures states:

20 "... [T]he Regional Board may require dischargers ... to furnish ... reports ..., provided
21 that the burden, including costs, of these reports, shall bear a reasonable relationship to
22 the need for the reports and the benefits to be obtained from the reports " Paragraph
23 III. B. of the Cleanup Policies and Procedures states that a Regional Board is required to
24 "[c]onsider whether the burden, including costs, of reports required of the discharger
25 during the investigation and cleanup and abatement of a discharge bears a reasonable
26 relationship to the need for the reports and the benefits to be obtained from the reports
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1” There are no findings contained in the Order addressing the burden or the cost of the
2 reports or analyzing the reasonable relationship of need and benefits.

3 As a result of these shortcomings, the Order is legally deficient.

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5 8. List of Persons Known to Have an Interest in
6 This Petition

7 Petitioner is attempting to develop and will request that the Regional
8 Board provide a list of persons known by the Regional Board to have an interest in the
9 subject matter of this Petition. Petitioner will provide the Regional Board's list of such
10 persons to the State Board as an amendment to this Petition.

11 In addition to any persons identified by the Regional Board pursuant to the
12 above request, the parties listed above in this petition may have an interest in the subject
13 matter of this Petition, and Petitioner is diligently searching for information on those
14 parties that may be available and, if any is found, will submit it as an amendment to this
15 petition. The names and addresses currently available to Petitioner are as follows:
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17 Mr. Kent Hein
18 Sierra Energy/Tom's Sierra
19 1020 Winding Creek Road #100
20 Roseville, CA 95678

21 Mr. David Warner
22 Warner Petroleum, Inc.
23 P.O. Box 6759
24 Chico, CA 95927

25 Mr. Sardar Mohammed
26 c/o Blue Star Petroleum Inc.
27 106 Crescent Street
28 Quincy, CA 95971

Mr. Greg Barton
Chevron Environmental Management Company
P.O. Box 6012, K2216

1 San Ramon, CA 94583

2 Mr. Larry Sullivan
3 Quincy Community Services District
4 900 Spanish Creek Road
5 Quincy, CA 95971

6 9. Sending Copies of this Petition

7 Petitioner is sending copies of this Petition to the Regional Board, and to
8 the parties listed in the preceding paragraph, to the extent it has addresses for those
9 parties.
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11 10. Request for Preparation of Regional Board Record

12 A copy of the request of Petitioner for preparation of the Regional Board
13 record, including available tape recordings or transcripts, if any, will be included as an
14 attachment to this Petition.

15 REQUEST FOR HEARING BEFORE THE STATE BOARD

16 In accordance with 23 C.C.R. § 2050(b), Petitioner respectfully requests that the
17 State Board hold a hearing to consider this Petition. Petitioner may present additional
18 evidence that was not available to the Regional Board at the time the Order was issued or
19 when this Petition was submitted. In addition, Petitioner requests permission at any
20 hearing: (1) to present oral argument on the legal and policy issues raised by this Petition;
21 and (2) to present to the State Board factual and technical information in the Regional
22 Board's files which may have been overlooked by the Regional Board.
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1 WHEREFORE, Petitioner respectfully requests action by the State Board as set
2 forth above.

3 Date: April 17, 2007
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5 Respectfully submitted,

6 LAW OFFICES OF KARL R. MORTHOLE

7 By Karl R. Morthole

8 Karl R. Morthole

9 Attorney for Petitioner Washoe Fuel, Inc.,
10 dba Allied Washoe
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